85-839

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE

UNITED STATES

October Term 1985

DANILO COMELIO LACHICA,

Petitioner

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Supplementary Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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Supplementary Appendix

to PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Opinion of Board of Immigration Appeals

File: 24 243 010 - San Francisco. In re: DANILO COMELIO LACHICA. IN DEPORTATION PROCEEDINGS. APPEAL. ON BEHALF OF RESPONDENT: Chung Nan Kim, Esquire, 1255 Post Street, Suite 800, San Francisco, California 94109. ON BEHALF OF SERVICE: Allen B. P. Lee, General Attorney. CHARGE: Order: Sec. 241(a)(2), I&N Act [8 U.S.C. § 1251(a)(2)] - Nonimmigrant - remained longer than permitted. APPLICATION: Voluntary departure.

ORDER: PER CURIAM: In a decision dated July 1, 1983, the immigration judge found the married male respondent, a native and citizen of the Philippines, deportable, denied the respondent's request for a continuance to have a full hearing on his application for voluntary departure under section 244(e) of

the Immigration and Nationality Act, 8 U.S.C. §1254(e), and denied him voluntary departure in lieu of deportation. On appeal, the respondent addresses the issue of the claimed denial of due process in not being granted a continuance. On the record, we find, as did the immigration judge, that the respondent, with benefit of counsel, was afforded an opportunity to establish that he was statutority eligible for and that he warrants the favorable exercise of the discretion of the Attorney General for voluntary departure. However, we find that the respondent, who chose not to testify on his own behalf, failed to establish that he is statutorily eligible for or warrants the privilege of voluntary departure. In light of his immigration history, we find the denial of voluntary departure under section 244(e) of the Act to be correct. Matter of Arai, 13 I&N Dec. 494 (BIA 1970).

On appeal, the respondnet's reliance

on Diric v. INS, 400 F. 2d 658 (9th Cir. 1968), 394 U.S. 1015 (1960), is misplaced. We find, as in Diric, that even if all such evidence were disregarded or had not been admitted, there was still ample basis for the denial of relief. The respondent did not establish that he is a person of good moral character to show statutory eligibility or that he merits favorable discretion. See 101(f) of the Act, 8 U.S.C.§ 1101(f); Matter of Pimentel, 12 I&N Dec. 50 (BIA 1967).

After considering the respondent's contention on appeal in his brief, we find that the immigration judge did not err in his denial of the motion for a continuance. 8 C.F.R. § 242.13. We are satisfied that the standards of due process have been met and that the respondent was accorded a fair hearing. 8 C.F.R. § 242.16. The respondent's request for oral argument before the Board is denied. Therefore, the appeal is dismissed.

/S/ Mary Maquire Dunne

Acting Chairman